OOI SIEW YOOK & ORS.

v.

LIM KAR BEE

HIGH COURT MALAYA, PENANG
EDGAR JOSEPH JR J
[ORIGINATING PETITION NO. 33-3-86]
20 FEBRUARY 1987

CIVIL PROCEDURE: *Consent Order - Application to vary consent order - Family company - Whether Court has jurisdiction.*

This was an application by the petitioners to vary a consent order dated 25 July 1986 arising out of a pending petition concerning a family company. The effect of the consent order was that all cheques drawn on the company's current accounts with various banks in the city were to be signed by the respondent (the father) and his wife, the 1st petitioner, jointly.

As the respondent was unreasonably withholding his signature to various cheques intended as payment to creditors, the petitioners applied to vary the consent order.

Held:

[1] The Court has jurisdiction to vary the consent order.

[2] In the exercise of the Court's discretion, the consent order was varied.

[Consent order varied. Liberty to apply.]

Cases referred to:
Purcell v. F.C. Trigell Ltd. & Anor. [1971] 1 QED 358
Toder v. Sansam [1775] 1 Bro PC 468

For the applicants/petitioners - K. Balasundram; M/s. Balasundram & Co.
For the respondent - Pamela Ong Siew Im; M/s. Lim Kean Siew & Co.

JUDGMENT

Edgar Joseph Jr J:

The short but important practical point which arose for decision in this case was whether I should vary a consent order, dated 25 July 1986, arising out of a pending petition concerning a family company praying for numerous reliefs but not for winding up.

At the outset, I invited Counsel to address me on the question whether I had the jurisdiction to vary the consent order in the particular circumstances of this case. I was satisfied that I had. It is not difficult to cite an array of cases to support this proposition; but, the following passage in the judgment of Denning MR in *Purcell v. F.C. Trigell Ltd. & Anor*. [1971] 1 QED 358, 363, 364 will suffice:

> The plaintiff says that no appeal lies from an order made with the consent of the parties, except in circumstances in which a contract may be set aside or varied, such as mistake, misrepresentation, and so forth: and that this applies to interlocutory orders as well as to final orders. Mr. Hicks for the plaintiff relied in this regard on *Toder v. Sansam* [1775] 1 Bro PC 468. I think that the plaintiff puts his case too high. I think that a party, who gets leave, can appeal from a consent order on wider grounds, at any rate in interlocutory matters. At p. 364 - 'The Court has always a control over interlocutory orders. It may, in its discretion, vary or alter them even though made originally by consent.'

The background to this case can be stated in a few words: it follows a familiar pattern of disputes involving members of a family who have fallen out. They belong to two camps: the father, a prominent contractor in the construction field, in one, his wife and children in the other. At the time of presentation of the petition and, even now, the father owns only 6% of the shares in the company concerned while his wife and children own 94%.

Allegations of fraud, in particular, misappropriation of funds and misuse of powers, have been freely made and each side is accusing the other of lying. Clearly, the truth can only be determined at the final hearing and after mature consideration. In the meanwhile, it is sufficient to say that manifestly the elements of trust and confidence, so essential to the proper running of any company, have ceased to exist. So much for the background.

This brings me to the consent order which I mentioned in the opening paragraph of this judgment and the effect of which was that all cheques drawn on the company's current accounts with various banks in the city were to be signed by the father and his wife jointly.

Within a short while of the making of the consent order, the petitioners - who are the wife and the children - found that it was unworkable because they said that the father was unreasonably withholding his signature to various cheques intended as payment to creditors. They feared that if such a state of affairs were to continue, the business interests of the company would be grievously wounded and the company immobilised; most particularly, they were very concerned about a major government contract for the construction of a bunded reservoir in Sabah. Obviously, the company has to expend money on work and labour and the purchase of equipment not to mention other things; this is essential if it is to fulfil its contractual obligations. It probably has overdraft at the banks. There are also the interests of the other party to this contract to be considered. On the other side of the coin, the father fears that if he loses his mandate to sign the company's cheques, he will lose control and, thus, be at the mercy of the petitioners. The problems posed are more human than legal.

It is not for me, at this stage of the proceedings, to go into the rights and wrongs of the matter; I have already said that that will have to await the final hearing.

After having given the fullest consideration to all the affidavit evidence, the exhibits annexed thereto and the submissions of Counsel on both sides, in the exercise of my discretion, I varied the consent order, so that subject to the provisions of an indemnity, by the petitioners, in a form to be approved by the Court, then in default of the father signing the company's cheques within one week of being required in writing so to do, the signatures of his wife and one of their two sons named in the prayer to this application would suffice. There was also liberty to apply.

Also found at [1987] 2 CLJ 237